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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1254**

State of Minnesota,
Respondent,

vs.

Marcus Jacoby Moore,
Appellant.

**Filed August 7, 2023
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-20-17499

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Bruce Rivers, Rivers Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this direct appeal from the judgment of conviction for unlawful possession of a firearm, appellant argues that the district court erred in denying his motion to suppress evidence seized from his car and that the evidence was otherwise insufficient to prove his

guilt. Because the record evidence supports the district court's denial of the motion to suppress and the circumstances proved do not establish a reasonable hypothesis of innocence, we affirm.

FACTS

In the early morning of August 8, 2020, several law-enforcement officers responded to a call for assistance at a private parking lot in downtown Minneapolis. The officers responded to the call in an unmarked squad car equipped with lights and sirens. Upon receiving the call for assistance, then-deputy Neil Lovejoy activated the emergency lights and sirens and proceeded to the parking lot.

While driving to the parking lot on a public street, officers approached a black SUV from behind. The SUV did not move out of the way of the squad car or attempt to pull over. The SUV continued traveling on a public street until it pulled into the parking lot ahead of the officers.

The officers parked behind the SUV. The officers determined that they were no longer needed to respond to the call and approached the SUV. The officers yelled at the driver—later identified as appellant Marcus Jacoby Moore—to put the vehicle in park, turn the vehicle off, and keep his hands up. Moore complied with these instructions, explained that the vehicle was registered to him, and stated that he was an unlicensed driver. One officer stated to Moore that “when there’s a squad with lights making their siren sound, you gotta get out of the way” and “we lit you up about 100 yards back.”

While speaking with Moore, Deputy Lovejoy smelled what he believed to be marijuana originating from inside the vehicle. Deputy Lovejoy also saw a flaky green substance in the vehicle cupholder. Deputy Lovejoy told Moore to exit the vehicle. Before exiting, Moore looked down and moved his hands inside the vehicle. In response, officers grabbed Moore's hands and raised them in the air. As Moore exited the vehicle with his hands raised, a firearm fell to the pavement.

On August 11, 2020, respondent State of Minnesota charged Moore with one count of possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subds. 1(2), 2(b) (2020). Moore moved to suppress the evidence of the firearm. The parties presented evidence as set forth above, and the district court denied his motion.

Moore waived his right to a jury trial, and the case was tried to the district court. The district court received testimony from officers involved in the incident and body-worn-camera video. At trial, the state presented evidence consistent with the facts as set forth above and the following additional evidence.

Deputy Lovejoy testified that during his initial interaction with Moore, he observed Moore making furtive movements toward the center console. While officers were interacting with Moore and the other passengers, they did not see any passenger place anything on Moore's lap or otherwise make movements in Moore's direction. When the officers first approached the stopped vehicle, a satchel was on Moore's lap, and the satchel remained on Moore's lap throughout his interaction with the officers.

When Deputy Lovejoy instructed Moore to step out of the vehicle, Moore began reaching toward the center console. In response, officers grabbed Moore's hands and

raised them as they removed him from the vehicle. As Moore stepped out of the vehicle, the satchel that was positioned on Moore's lap fell to the ground and police heard the firearm hit the pavement. The firearm was loaded and weighed approximately three to five pounds.

Police then recovered three additional firearms from the vehicle. At the scene, Moore stated that the firearm that fell out of the vehicle was "in between my seat." Body-worn-camera video does not depict the presence of a firearm between the driver's seat and the driver's side door. The district court found Moore guilty of possession of a firearm by an ineligible person and sentenced him to 60 months' imprisonment.

Moore appeals.

DECISION

Moore argues that the district court erroneously denied his motion to suppress evidence obtained from his vehicle because law enforcement had no legal basis to stop the vehicle or remove him from the vehicle. Moore also argues that the evidence at trial was insufficient to prove his guilt. We disagree and address each argument in turn.

I. The officers had reasonable suspicion to lawfully stop Moore's vehicle.

Moore argues that police did not have reasonable suspicion to stop his vehicle and that the district court's findings of fact supporting reasonable suspicion are clearly erroneous. Moore specifically asserts that the district court clearly erred in finding that Moore was driving on a public road while an emergency vehicle—here, the unmarked squad car—behind him was flashing its lights and using its siren. He argues that because the record shows that the unmarked squad car did not flash its lights or activate its siren

until Moore was in a private parking lot, rather than while he was on a public roadway, he did not commit a traffic violation under Minn. Stat. § 169.20, subd. 5(a) (2020), and law enforcement therefore lacked reasonable, articulable suspicion of criminal activity necessary to justify a stop.¹ Because the record supports the district court’s findings, we disagree.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). “We may independently review facts that are not in dispute, and determine, as a matter of law, whether the evidence need be suppressed.” *Id.* (quotation omitted). In so doing, we do not reweigh the evidence or reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *State v. Thompson*, 988 N.W.2d 149, 158 (Minn. App. 2023) (applying *Kenney* in reviewing a criminal matter), *rev. denied* (Minn. June 20, 2023). Instead, we conduct “a review of the record to confirm that evidence exists to support the decision.” *Kenney*, 963 N.W.2d at 222.

¹ Minn. Stat. § 169.20, subd. 5(a), requires drivers to “immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway” when “an authorized emergency vehicle equipped with at least one lighted lamp exhibiting red light” and “giving audible signal by siren” is approaching. A “[s]treet or highway” is defined as “the entire width between boundary lines of any way or place when any part thereof is open to the use of the public, as a matter of right, for the purposes of vehicular traffic.” Minn. Stat. § 169.011, subd. 81 (2020).

“In reviewing a district court’s determinations of the legality of a limited investigatory stop, we review questions of reasonable suspicion *de novo*.” *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). We defer to the district court’s credibility determinations. *See State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *rev. denied* (Minn. July 15, 2003).

Police may “stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity.” *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quotation omitted). Reasonable suspicion requires that police “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Britton*, 604 N.W.2d at 87 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). “[I]f an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle.” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997); *see also State v. Krenik*, 774 N.W.2d 178, 183 (Minn. App. 2009) (citing *Whren v. United States*, 517 U.S. 806, 810 (1996)) (concluding that a traffic stop was reasonable because police stopped appellant’s vehicle after observing a traffic violation), *rev. denied* (Minn. Jan. 27, 2010).

Against this backdrop, we conclude that the record evidence supports the district court’s findings. The district court found that (1) Deputy Lovejoy activated the unmarked squad car’s emergency lights and sirens while on a public street, (2) the police vehicle approached a black SUV on a public street, (3) the “black [SUV] did not move out [of the] way or attempt to pull over,” (4) the SUV continued to travel on the public street until it

stopped in a private parking lot, and (5) Moore was driving the SUV.² These facts constitute a violation of Minn. Stat. § 169.20, subd. 5(a). *See State v. Shunzhong Li*, 948 N.W.2d 151, 154 (Minn. App. 2020) (describing conduct that violates Minn. Stat. § 169.20, subd. 5(a)).

The record supports the district court’s findings. Deputy Lovejoy testified that upon receiving the call to assist other officers in the area, he “activated [his] emergency lights and sirens and proceeded to the area.” He testified that the squad car was set up with flashing headlights and a red and blue light inside the grill and that the blue and red lights were operable as of the start of his shift. Deputy Lovejoy testified that he was responding to a “Code 3” incident, and agreed that as a result, he used lights and sirens on the squad car. He also testified that the sirens do not automatically turn on with the lights but that it is standard practice to activate both lights and sirens. The first 15 seconds of video footage from Deputy Nick Peterson’s body-worn camera, which was submitted as an exhibit at the evidentiary hearing, depicts Moore’s vehicle in front of the police vehicle on the public road before turning left into the parking lot. During this time, while Moore’s vehicle is on the public road in front of the squad car, the video depicts a visible reflection of a blue and red flash of light against a building on the right side of the image. Moore’s vehicle does not stop or yield to the police vehicle. Deputy Lovejoy also testified that during

² The district court also found that the police encountered Moore’s vehicle “[e]arly in their response,” and that “[t]o alert the driver of their emergency status Deputy Lovejoy changed the tone of the siren and lights’ pattern.” We did not find evidence in the record supporting either of these findings. Even so, the district court’s findings set forth above are sufficient to support the district court’s conclusion that police had reasonable suspicion to stop Moore’s vehicle.

approximately the first 39 seconds of Deputy Peterson’s body-worn-camera video—which depicts both vehicles traveling on a public roadway, entering the parking lot, and stopping in the parking lot—Moore’s vehicle did not yield for the squad car. After police approached Moore’s stopped vehicle, one officer stated to Moore that “when there’s a squad with lights making their siren sound, you gotta get out of the way” and “we lit you up about 100 yards back.” This record evidence supports the district court’s factual findings that Moore was driving on a public road when he failed to yield to an emergency vehicle with active lights and sirens.

Moore argues that he did not violate traffic laws by failing to yield to an emergency vehicle on a public road because “law enforcement did not turn on their lights until they had already entered the private parking lot.”³ Moore argues that the record only supports a finding that, at the earliest, officers turned on their emergency vehicle lights once both Moore and the officers were located in the private parking lot because Deputy Lovejoy testified that he did not “recall” if the police vehicle’s lights and sirens were active at the 15-second mark of Deputy Peterson’s body-worn-camera video but testified that they were on at the 22-second mark of the video.

But we do not discern this testimony as rendering the district court’s findings clearly erroneous. The fact that Deputy Lovejoy did not recall if lights and sirens were active upon entering the parking lot does not preclude a factual finding that lights and sirens were active

³ While Moore argues he did not fail to yield to an emergency vehicle using lights and sirens on a public road, Moore does not appear to dispute that at some point during the incident, he was driving on the public road (i.e., the highway as defined by statute) and that the squad car was behind him at that time.

while the police vehicle was traveling on the public road. Because the record contains “evidence [that] reasonably supports” the district court’s findings, the district court did not clearly err. *Kenney*, 963 N.W.2d at 222. Accordingly, the officers lawfully stopped Moore based on his traffic violation. See *George*, 557 N.W.2d at 578; see also *Diede*, 795 N.W.2d at 842.

II. Police lawfully removed Moore from his vehicle.

Moore seems to argue that police did not have a legal basis to remove him from his vehicle, and therefore the district court should have suppressed the evidence of the firearm that fell onto the ground as he exited the vehicle. We disagree.

As an initial matter, we disagree with Moore’s assumption that police required probable cause to remove him from the vehicle.⁴ The law requires that “each incremental intrusion during a traffic stop be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*.” *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). Consistent with these principles, generally “a police officer may order a driver out of a lawfully stopped vehicle without an articulated reason.” *Id.* at 367 (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977)).

⁴ We also disagree with Moore’s assertion that police lacked probable cause to remove him to search the vehicle. Probable cause is an objective inquiry based on the totality of the circumstances. *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). Here, the totality of the circumstances included the traffic violation in the early morning hours, Moore admittedly driving without a license, and observations of a substance consistent with a controlled substance. The totality of these circumstances gave police probable cause to remove Moore to search his vehicle.

Here, police had a legal basis to remove Moore from the vehicle. Police lawfully stopped Moore for a traffic violation and, as a result, could lawfully order Moore out of the vehicle even without probable cause for arrest. *Id.* Even so, we note that the police had probable cause to remove and arrest Moore due to his failure to yield to an emergency vehicle. Minn. Stat. § 169.20, subd. 5a(a) (2020) (authorizing a peace officer to arrest the driver of a motor vehicle for failing to yield to an emergency vehicle). Accordingly, the district court did not err in denying Moore’s motion to suppress on that basis.

III. The evidence was sufficient to prove Moore knowingly possessed the firearm.

Moore argues that the state did not introduce sufficient evidence to prove he is guilty of possessing a firearm while ineligible. He argues that no direct evidence tied him to possession of the firearm and that the circumstances proved support reasonable inferences that he did not possess the firearm. Because the evidence supports reasonable inferences that Moore knowingly possessed the firearm and is inconsistent with a rational hypothesis of innocence, we disagree.

To convict Moore of possession of a firearm by an ineligible person, the state was required to prove beyond a reasonable doubt, in relevant part, that he knowingly possessed the firearm. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017); *see also* Minn. Stat. § 624.713, subd. 2(b); *cf. State v. Ndikum*, 815 N.W.2d 816, 818 (Minn. 2012) (stating that statutory silence is typically insufficient to dispense with the mens rea requirement). On appeal, Moore seems to dispute the sufficiency of the evidence as to the elements of possession and knowledge.

The state may prove possession of a firearm through evidence of actual or constructive possession. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). On appeal, neither party appears to consider whether Moore’s possession was actual or constructive, but the district court explicitly concluded that Moore was in actual possession of the firearm. Actual possession means that the defendant had “actual or physical possession [of the firearm] when arrested.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). “The mere fact that an item is not in a defendant’s physical possession at the time of apprehension does not preclude prosecution for actual possession.” *State v. Barker*, 888 N.W.2d 348, 354 (Minn. App. 2016). Actual possession involves “direct physical control” of the contraband, even at an earlier time. *Id.* at 353-54.

The state must also prove that an ineligible person knowingly possessed a firearm. *Harris*, 895 N.W.2d at 601. Knowledge is usually proved by circumstantial evidence. *State v. Siirila*, 193 N.W.2d 467, 473 (Minn. 1971).

The state relied on circumstantial evidence to prove both possession and knowledge. We follow a two-step process in reviewing the sufficiency of the evidence in a case based on circumstantial evidence, *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011), and “the same standard of review [applies to] bench trials and [to] jury trials in evaluating the sufficiency of the evidence,” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). In the first step, we must identify the circumstances proved. *Hawes*, 801 N.W.2d at 668. In identifying the circumstances proved, we “defer, consistent with [the] standard of review, to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Al-Naseer*,

788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). In other words, we must “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008).

In the second step, we “determine whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt.” *Hawes*, 801 N.W.2d at 669 (quotation omitted). While we give deference to the fact-finder when reviewing the circumstances proved, we give “no deference to the fact finder[’]s choice between reasonable inferences.” *Id.* (quotation omitted). When evaluating whether the circumstances proved are consistent with a rational hypothesis of guilt and inconsistent with a rational hypothesis of innocence, we “do not review each circumstance proved in isolation.” *State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010). “Instead, we must consider whether the circumstances presented are consistent with guilt and inconsistent, *on the whole*, with any reasonable hypothesis of innocence.” *Id.* (quotation omitted).

Possession

The state proved the following circumstances regarding possession: (1) as Moore exited the vehicle, items fell from Moore’s lap and hit the pavement; (2) items that hit the pavement made a sound consistent with metal hitting the ground; (3) Detective Lovejoy heard the metallic sound as Moore exited the vehicle and the items hit the pavement; and (4) Detective Lovejoy immediately observed a firearm on the ground. The circumstances proved reasonably support the inference that Moore had actual physical control of the

firearm as he was exiting the vehicle and are not consistent with any other rational inference. *See id.* at 354 (circumstantial evidence of direct physical control at a time prior to arrest can constitute actual possession). Thus, the evidence was sufficient to prove the element of actual possession.

Moore argues that his statement during the stop that the firearm was “in between [his] seat” and an officer’s testimony that the firearm and satchel fell “independently” of one another supports the inference that a passenger “stashed” the firearm between the driver’s seat and driver’s side door. He also argues that the fact that there were five people in the vehicle (Moore and four passengers) and that four total firearms were found (the firearm that fell to the pavement and three others found during the subsequent search of the vehicle) supports an inference that the firearm could have belonged to a passenger, not Moore.

Moore’s arguments are unpersuasive. First, his assertion that the evidence supports an inference that the firearm was “stashed” between the driver’s seat and the driver’s side door is not supported by any record evidence, is not a circumstance proved, and appears to have been discredited by the fact-finder.⁵ *See Al-Naseer*, 788 N.W.2d at 473 (“We will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” (quotation omitted)). Second, the fact that the vehicle contained additional occupants and firearms does not support a reasonable inference that Moore did not actually possess the firearm. *See id.* Even so, Moore’s assertion that the evidence supports an

⁵ Moore offers no explanation, let alone any evidence, as to how a passenger could have “stashed” or positioned the firearm in the manner he suggests.

inference that a passenger may have possessed the firearm does not negate Moore's possession because possession may be joint. *See State v. Lorenz*, 368 N.W.2d 284, 287-88 (Minn. 1985) (holding that the evidence was sufficient to convict the defendant of possessing contraband under the state's theory of actual or constructive joint possession); 10 *Minnesota Practice*, CRIMJIG 8.01 (2015) (stating possession is joint if two or more persons share actual or constructive possession). Accordingly, the evidence was sufficient to establish possession.

Knowledge

In addition to the circumstances proved as set forth above, the state proved the following additional circumstances with respect to Moore's knowledge: (1) when police pulled up behind Moore's vehicle, then-Sergeant Jeffrey Kirchoff did not observe any furtive movements inside the vehicle; (2) Moore stated that the vehicle was registered in his name; (3) Moore initially spoke with police through a partially open window; (4) after opening the driver-side window, Moore made furtive movements toward the center console; (5) Moore spoke with the police through the open window for about four minutes; (6) during this time, police did not see any passenger place anything on Moore's lap or otherwise move toward Moore's lap; (7) a satchel was positioned on Moore's lap when police first approached him; (8) police ordered Moore to step out of the vehicle; (9) instead of turning to exit the vehicle, Moore began to reach toward the center console; (10) police stopped Moore from reaching toward the center console and raised his hands in the air; (11) Moore's hands remained in the air as police removed him from the vehicle; (12) Moore stood up awkwardly as police removed him from the vehicle; (13) as Moore stepped out of

the vehicle, the satchel and firearm fell to the pavement; (14) police heard the firearm hit the pavement; (15) the loaded firearm weighed approximately three to five pounds; and (16) police recovered three additional firearms from the vehicle. The circumstances proved support the reasonable inference that Moore had knowledge of the firearm and are not consistent with any other rational inference.

Moore asserts that the district court failed to consider the following circumstances proved and that these circumstances proved support a rational hypothesis other than guilt: (1) the DNA tests from the firearm were “inconclusive”; (2) no one testified to seeing the firearm in Moore’s lap; (3) no identifying information was found in the satchel allegedly containing the firearm nor in or on the firearm itself; (4) Moore denied possession of the firearm; (5) there is no evidence that anyone in the vehicle saw Moore possess the firearm; and (6) the officers testified that they did not watch the passengers at all times and so it was possible that a passenger could have “made furtive movements outside of their perception.”

We are not persuaded. Moore essentially argues that there is no direct evidence that he knew of or possessed the firearm, but the absence of direct evidence does not negate the existence of circumstantial evidence supporting a reasonable inference that Moore knew of and possessed the firearm. To the extent that Moore’s assertions rely on evidence that conflicts with the circumstances proved, we cannot consider them in the circumstantial-evidence analysis. *See Al-Naseer*, 788 N.W.2d at 473 (stating that consistent with the standard of review, appellate courts defer to the fact-finder’s “acceptance of proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances

proved by the state”); *Tscheu*, 758 N.W.2d at 858 (stating appellate courts must “construe conflicting evidence in the light most favorable to the verdict”). Thus, Moore has not identified why the circumstances proved are “inconsistent, *on the whole*, with any reasonable hypothesis of innocence.” *Id.* (quotation omitted). Accordingly, the evidence is sufficient to sustain the verdict.

Affirmed.